



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Joe C. Humphrey, Chairman
Congressional and Legislative Districts Committee
House of Representatives
49th Legislature
Austin, Texas

Dear Mr. Humphrey:

Opinion No. 0-6488

Re: Power of the Legislature to
table a bill which the Constitu-
tion mandatorily requires the
Legislature to enact, such as re-
apportionment legislation, re-
quired by Section 28 of Article
III of the Constitution.

We beg to acknowledge receipt of your request for an
opinion upon the above subject matter, as follows:

"As chairman of the House Committee on Con-
gressional and Legislative Districts, I would
like to request an opinion of you in reference
to House Bill No. 1, the Legislative Redistrict-
ing Bill which was introduced by the Honorable
Harley Sadler of Sweetwater.

"This bill was given emergency status by
Governor Coke R. Stevenson. When this bill
reached the House calendar recently, a motion
was made on the floor of the House to table
the bill. This motion carried by a vote of
seventy-five to fifty-eight.

"The question which I am directing to you
is this: Can the Legislature table a bill which
the Constitution requires the Legislature to en-
act?

Section 28 of Article 3, of the Constitution
of Texas, provides for the re-apportionment of
the Legislature into Senatorial and Representa-

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tive districts in accordance with the provisions of Sections 25 and 26 of Article 3. Since Section 28 states, 'The Legislature shall, at its first session after publication of each United States decennial census, apportion the State into Senatorial and Representative districts, agreeably to the provisions of Sections 25 and 26 of this Article.' I would like to ask of your department a second question; namely, does this section mean that the obligation of redistricting the State rest only and entirely on the first session after the United States decennial census has been taken, or is it a continuing obligation of each session of the Legislature, after the census has been taken, to redistrict the State until such time as the State has been redistricted?"

Article III, Section 11, of the Constitution of Texas is in part as follows:

"Each House may determine the rules of its own proceedings."

Sections 25, 26 and 28 of Article III of the Constitution are pertinent to your inquiries, and are as follows:

"Sec. 25. The State shall be divided into Senatorial Districts of contiguous territory according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one Senator; and no single county shall be entitled to more than one Senator.

"Sec. 26. The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has

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more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties.

"Sec. 28. The Legislature shall, at its first session after the publication of each United States decennial census, apportion the State into Senatorial and Representative districts, agreeably to the provisions of sections 25 and 26 of this Article; and until the next decennial census, when the first apportionment shall be made by the Legislature, the State shall be, and it is hereby divided into Senatorial and Representative districts as provided by an ordinance of the Convention on that subject."

Each of these provisions is mandatory in form and in substance, for they use the familiar language of command. In the nature of the thing to be done, however, the Constitution is not self-enacting, nor could it be, but the duty of re-apportioning the State into Senatorial and Representative districts is expressly imposed upon the Legislature. It is, of course, true the Constitution provides no penalty or consequence whatever for the failure of the Legislature to obey this mandate, yet the Legislature is powerless to absolve itself from the performance of that duty by any act whatsoever.

So that, you are respectfully advised the Legislature, under its own rules of proceedings, may table a redistricting bill, but it cannot by such parliamentary procedure deprive itself of the power to comply, nor relieve itself of the duty of complying with said provisions of the Constitution other than by passing some form of redistricting bill.

You are further advised with respect to your second question that the language of Section 28, "The Legislature shall, at its first session after the publication of each United States decennial census" is not a limitation upon the power of the Legislature, but rather is an accentuation of the importance of the subject matter of the Section. In answer to your second question, therefore, you are advised that this Section means the redistricting of the State is a continuing duty of the Legislature until such time as the State has been redistricted. We also refer you to our Opinion No. 0-4899, a copy of which you evidently have.

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We trust that what we have said sufficiently answers
your inquiry.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED MAR 29 1945

By

Ocie Speer
Ocie Speer
Assistant

[Signature]
FIRST ASSISTANT
ATTORNEY GENERAL

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